

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.1037 OF 2004

1. Thirumalaisamy
2. Govindasamy

Petitioners/Appellants/Accused 1 and 2

-vs-

State by Sub Inspector of Police
Avinashpalayam Police Station,
Crime No.283 of 1997
Coimbatore District

Respondent/Respondent/Complainant

This Revision is filed against the Judgment of the learned Additional Sessions Judge(Fast Track Court No.4) Coimbatore at Tiruppur in C.A.No.412 of 2003 dated 16.6.2004

For petitioners :: Mr.S.N.Arunkumar
For respondent :: Mr.V.R.Balsubramanian
Addl. Public Prosecutor

O R D E R

This revision has been preferred against the Judgment in C.A.No.412 of 2003 on the file of the learned Additional Sessions Judge(Fast Track Court No.4) Coimbatore at Tiruppur.

2)The short facts of the prosecution case are that on 17.9.1997 at about 16.00 hours, due to the land dispute , A1 had assaulted P.W.4 , the injured Arukkani with a handle of the spade (M.O.1) on her right hand causing grievous injury and that A2 had assaulted P.W.4 with a stick(M.O.2) Arukkani on her right chest, causing simple injury and hence A1 has been charged under Section 325 of IPC and A2 has been charged under Section 323 of IPC.

3) After taking cognizance of the offence, the learned Judicial Magistrate, Palladam, after securing the accused, by way of summons had furnished the copies under Section 207 of Cr.P.C. and when the charges under Section 325 of IPC against A1 and under

Section 323 of IPC against A2 were framed and questioned the accused pleaded not guilty.

4) Before the trial Court, P.Ws 1 to 12 were examined. Exs P1 to P10 were exhibited and M.O.1 to M.O.3 were marked.

5) P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, and P.W.6 are the neighbours. P.W1 and P.W.2 are the husband and wife. P.W.3 is the brother of P.W.1. P.W.4 is the mother of P.W.1 and P.W.3. On 17.9.1997 at about 6.00p.m., when Ponnusamy and Subramaniam were ploughing the land, P.W.1 had made a request to them not to plough the land before partitioning the land. A1 came with a spade and assaulted P.W.4 with the handle of spade on her right hand causing grievous injury. A2 had assaulted with a stick causing simple injury on her hip and also on her chest. Both P.W.6 and P.W.7 are another eye witnesses relied on by the prosecution. They have not supported the case of the prosecution, hence they were treated as hostile witnesses. The complaint was preferred by P.W1 the son of P.W.4. P.W.1 narrates what has been stated in Ex P1 complaint. The doctor who had examined P.W.4 was examined as P.W.9. P.W.10 is the Sub Inspector of Police, who had registered the complaint in Crime No.783 of 1997 under Section 325 of IPC. Ex P7 is the first information report. According to P.W.9, the doctor who had examined P.W.4, who had referred P.W.4 to P.W.12 for taking X-ray on the right hand and chest, since P.W.4 was suffering from enormous pain in the right hand and chest with contusion. M.O.3 is the X-ray and Ex P6 is the report of the doctor P.W.12. As per Ex P6, P.W.12 has described the injury on the right hand of P.W.4 as grievous in nature and the injury on the chest as a simple in nature. Ex P5 is the copy of the accident register issued by P.W.9 who had examined P.W.4 before referring her to P.W.12. P.W.11 is the Investigating Officer after taking the case for investigation visited the place of occurrence on 17.9.1997 itself and prepared Ex P5 observation mahazar and had drawn Ex P9 rough sketch. He has examined the witnesses and recorded their statements. He has recovered M.O.1, the handle of spade, used by A1 in the occurrence and M.O.2 stick used by A2 in the occurrence under Ex P4 mahazar in the presence of P.W.8. He had arrested the accused on 18.9.1997 at 12.30 p.m., and produced them before the Judicial Magistrate for Judicial remand. After completing the formalities, P.W.11 has filed the charge sheet against the accused.

6) When incriminating circumstances were put to the accused, they would totally deny their complicity with the crime.

7) After going through the oral and documentary evidence, the learned trial Judge has held that A1 is guilty under Section 325 of IPC and convicted and sentenced him to undergo one year rigorous imprisonment and slapped a fine of Rs.2000/- with default

sentence. The trial Judge has also convicted A2 under Section 323 of IPC and sentenced him to undergo three months rigorous imprisonment along with a fine of Rs.500/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused have preferred an appeal in C.A.No.412 of 2003 before the Additional Sessions Judge, (Fast Track Court No.4) Coimbatore at Thirupur who after careful consideration of the evidence let in before the trial Court has confirmed the conviction and sentence against A1 and A2 thereby dismissing the appeal which necessitated the accused to prefer this revision.

8) When the matter was taken up for hearing, Mr.S.N.Arunkumar, the learned counsel appearing for the revision petitioners would represent that the sentence alone may be modified and a substantial amount of fine may be levied on A1 and the same may be awarded as compensation and that against A2, there is no evidence to warrant conviction under Section 323 of IPC, since before the doctor P.W.9 the victim P.W.4 has stated that she was assaulted only by one person and not by two persons. Heard Mr.V.R.Balasubramaniam, the learned Additional Public Prosecutor who has no serious objection for the mode of disposal suggested by the learned counsel appearing for the revision petitioners.

9) when the matter was taken up on 16.7.2007, the learned Additional Public Prosecutor was also given time to ascertain from P.W.4 whether she is agreeable to receive the substantial compensation amount of Rs.7500/- from A1 and the learned Additional Public Prosecutor has reported today (17.7.2007) before this Court that P.W.4 the victim lady was consulted through the police and she had agreed to receive the compensation of Rs.7500/-.

10) In fine, the revision is allowed in part and the conviction against A1 under Section 325 of IPC is hereby confirmed but the sentence alone is modified to that of the period already undergone instead of one year rigorous imprisonment and a fine of Rs.7500/- in default to undergo one year rigorous imprisonment and out of the fine amount, the entire amount of Rs.7500/- is directed to be paid as compensation for P.W.4 under Section 357 (1) of Cr.P.C. The fine amount to be paid before the trial Court within one week from today. The revision is allowed against A2 and the conviction and sentence against A2

under Section 323 of IPC is hereby set aside. A2 is acquitted from the charges levelled against him. The fine amount if any paid by A2 is to be refunded to A2.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Sessions Judge/fast Track Court No.4, Coimbatore at Thirupur
2. The District and Sessions Judge, Coimbatore
3. The District Munsif-cum-Judicial Magistrate, Palladam
4. -do through the Chief Judicial Magistrate, Coimbatore
5. The Public Prosecutor, High Court, Madras
6. The Sub Inspector of Police, Avinashipalayam Police Station Coimbatore
7. The Superintendent at Central Prison, Coimbatore

+ one cc to Mr. C. Ramkumar, Advocate sr no. 43490

AD(CO)
NM(17.07.07)

सत्यमेव जयते
Crl.R.C.No.1037/2004

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